IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 189.

WILLIAM H. JONES, JOHN HILL AND EDGAR POE LEE, Plaintiffs in Error,

vs.

ANDREW J. MONTAGUE, GOVERNOR OF VIRGINIA; D. Q. EGGLESTON, SECRETARY OF THE COMMONWEALTH OF VIRGINIA; MORTON MARYE, AUDITOR OF PUBLIC ACCOUNTS OF VIRGINIA, AND OTHERS, Defendants in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

MOTION TO DISMISS WRIT OF ERROR OR TO AFFIRM JUDGMENT OF THE LOWER COURT.

Now come the defendants in error, by their counsel, and move the court to dismiss the writ of error in the above entitled cause, upon the ground that there is now no actual controversy involving real and substantial rights between the parties to the record, and no subject matter upon which the judgment of this court can operate; or to affirm the judgment of the Circuit Court of the United States for the Eastern District of Virginia in this cause, on the ground that although the record shows that this court has jurisdiction, the questions on which the jurisdiction depends are so frivolous as not to need further argument.

William A. Anderson
Frank W. Christian
Counsel for Defendants in Error

NOTICE OF MOTION TO DISMISS OR AFFIRM.

John S. Wise, Esq.,

Attorney for Plaintiff in Error:

Please take notice that on Monday, the 29th day of February, 1904, at the opening of the court, or as soon thereafter as counsel can be heard, the above motion to dismiss the writ of error, or to affirm the judgment of the lower court in the above entitled cause, will be submitted to the Supreme Court of the United States, at Washington, in the District of Columbia, for the decision of said court thereon.

Annexed hereto are copies of the briefs of argument, which will be submitted with said motion in support thereof.

William A. Anderson
Frank W. Christian
— Counsel for —
Defendants in Error.

BRIEF FOR DEFENDANTS IN ERROR ON MOTION TO DISMISS.

This motion to dismiss this writ of error is founded upon the ground that everything sought to be prohibited in this proceeding has already been done, and that nothing remains upon which any order of the court can operate.

After the lower court refused the prohibition prayed for in this case, the Board of State Canvassers of Virginia met and canvassed the returns for members of the House of Representatives, and the Secretary of the Commonwealth of Virginia issued writs of election to the members of the House of Representatives elected at such election. The Honorable Carter Glass, who was elected to fill an unexpired term in the Fifty-seventh Congress from the Sixth District of Virginia, appeared and was admitted to take his seat in the House of Representatives under said election, in December, 1902; and he and the other members of the House of Representatives elected at said election to the Fifty-eighth Congress, have since been allowed to take their seats in the House of Representatives as representatives from Virginia under the said election.

We think this court may take judicial notice of these facts. However, we submit herewith an affidavit showing the action of the Board of Canvassers and the Secretary of the Commonwealth; the other facts stated appear upon the Congressional record.

Nothing, therefore, remains to be done in this case upon which the decree of the court can operate.

The suggestion made by opposing counsel that the proceeding involves the validity or invalidity of the election held on November the 4th, 1902, and the Constitution and ordinance of registration of Virginia, and, therefore, the future rights of the complainants, is without force; for it is manifest that a decree adjudicating those questions would be merely upon abstract or moot questions; and it has been uniformly held that the court will not undertake to pass upon such questions. We, therefore, submit that this writ of error will be dismissed upon the ground above stated. See *Mills* v. *Green*, 159 U. S. 651, and cases cited; *United States* v. *Hoffman*, 4th Wallace, 158.

State of Virginia,
City of Richmond, to-wit:

I, David Q. Eggleston, being duly sworn, do hereby state as follows:

I was, in the year 1902, Secretary of the Commonwealth of Virginia, and as such a member of the Board of State Canvassers of Virginia. After the Circuit Court of the United States for the Eastern District of Virginia rendered its judgment and decree dismissing the petition for a writ of prohibition and the bill praying for an injunction in the two causes of "William H. Jones and others against Andrew J. Montague, Governor of Virginia, and others," and "William S. Selden and others against Andrew J. Montague, Governor of Virginia, and others," to-wit, on the 29th day of November, 1902, the said Board of State Canvassers of Virginia convened at the office of the Secretary of the Commonwealth of Virginia, and, in accordance with the law of the State of Virginia in such cases, proceeded, upon the certified abstracts on file in the office of the Secretary of the Commonwealth, to examine and make statements of the whole number of votes given at the election held on November 4th, 1902, for representatives in Congress; which statements showed the names of persons to whom votes had been given at said election for said offices, and the whole number given to each, distinguishing the several districts, cities and counties in which they were given; and the said board certified such statements to be correct, and subscribed their names thereto, and determined what persons had been, by the greatest number of votes, duly elected as representatives in Congress from Virginia; and endorsed and subscribed on said statements a certificate of such determination and delivered them to the Secretary of the Commonwealth of Virginia.

And I further state, that on the said 29th day of November, 1902, I, as Secretary of the Commonwealth of Virginia, recorded, in a suitable book kept by me in my office for that purpose, each certified statement and determination as made by the Board of State Canvassers, and on the same day made out and transmitted to each of the persons thereby declared to be elected representatives in Congress from the State of Virginia, a certificate of his election, certified by me under my seal of office.

David Q. Eggleston

I, John S. Eggleston, a Notary Public in and for the city of Richmond and State of Virginia, hereby certify that the foregoing statement was subscribed and sworn to before me, in my said city and State, on this 28th day of January, 1904.

Given under my hand and official seal this 28th day of January, 1904.

John S. Eggleston

Notary Public.

My commission as a Notary Public expires on the 14th day of March, 1905.